PRE-APPEAL BRIEF REQUEST FOR REVIEW

	Docket Number
	20412-8456

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on _____ Signature _____ Typed or printed name _____	**Application Number** 10/814,500	**Filed** March 30, 2004
	First Named Inventor Peter E. Hart	
	Art Unit 2625	**Examiner** J. Thompson

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).
      Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor.

☐ assignee of record of the entire interest.
    See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.

☒ attorney or agent of record.
    Registration number   50,784

☐ attorney or agent acting under 37 CFR 1.34.

    Registration number if acting under 37 CFR 1.34 _____

/Jennifer R. Bush/
          Signature

Jennifer R. Bush
          Typed or printed name

(650) 335-7213
          Telephone number

October 31, 2008
          Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below".

☐ *Total of _____ forms are submitted.

REMARKS FOR PRE-APPEAL BRIEF REQUEST FOR REVIEW IN U.S. PATENT APPLICATION NO. 10/639,282 FILED ON 8/11/2003

Pre-appeal brief review is appropriate in this application because the rejections in the Final Office Action dated July 3, 2008 ("FOA") contain clear deficiencies. The rejections of claims 1-118 should be withdrawn. As set forth below, the cited references fail to disclose the claimed limitations and thus *prima facie* obviousness as required by MPEP 2143.03 has not been established.

Claims 1-6, 20-21, 40, 45 and 55 are pending and stand rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over USPN 5,721,883 to Katsuo ("Katsuo") in view of USPN 5,633,723 B1 to Sugiyama ("Sugiyama") and an article entitled "Performance Analysis of Median Filtering on Meiko™ – A Distributed Multiprocessor System" by K.M. Poon and N.H.C. Yung ("Poon"). This rejection now is traversed.

Claim 1 recites a system for printing time-based media data, the system comprising, *inter alia,* "a user interface for receiving user input, the user input… specifying a distribution of processing power for carrying out the specified multimedia function…."

Katsuo, Sugiyama, and Poon, considered either alone or in the suggested combinations, do not disclose or suggest at least this claimed feature. The Examiner admits that Katsuo does not disclose or suggest receiving user input. *See* FOA, p. 3, ll. 21-22. Katsuo also does not disclose or suggest receiving user input that specifies a distribution of processing power. *See* RFR, p. 17, ll. 13-23. Rather, Katsuo merely describes a processor that analyzes a file specifying a number of identical arithmetic processors. The file does not specify a distribution of processing power. *See* Katsuo, col. 6, ll. 40-49. The processor then follows a predefined

algorithm to allocate processing between the identical arithmetic processors. *See* Katsuo, col. 4, ll. 5-16; col. 4, ll. 43-59.

Poon also does not disclose or suggest receiving user input or receiving any input that specifies a distribution of processing power. Rather, Poon merely describes a master processor that divides processing evenly among identical slave processors according to a set formula. *See* Poon, p. 635, left col.; RFR, p. 18, ll. 1-7.

Sugiyama discloses receiving various user inputs, but does not contemplate any aspects of parallel or distributed processing. *See* RFR, p. 18, ll. 14-18. As such, Sugiyama does not disclose or suggest any method for distributing processing among multiple processors, and certainly does not disclose or suggest receiving user input that specifies a distribution of processing power. *See* Sugiyama, FIG. 1, numerals 21-25; col. 3, l. 57-col. 4, l. 8.

A combination of the cited references also would fail to yield the claimed invention. At best, a combination of Katsuo, Poon, and Sugiyama would yield a video printer that distributes processing according to a predefined algorithm and includes selection keys for mode setting. *See* RFR, p. 18, l. 19-p. 19, l. 2.

Applicants believe the Examiner misunderstood previously asserted arguments regarding user input and control over distribution of processing power. In the Advisory Action dated September 19, 2008 ("AA"), the Examiner stated that user interfaces are abundantly well-known in the art and refers to <u>User Interface Design</u> by Soren Lausen ("Lausen"), USPN 5,761,380 to Lewis et al ("Lewis"), USPN 5,428,555 to Starkey et al ("Starkey"), USPN 5,757,897 to LaBarbera ("LaBarbera"), and USPN 5,721,883 to Feitelson et al ("Feitelson") as allegedly demonstrating this abundance. *See* AA, p. 2, l. 27-p. 3, l. 22. However, none of Lausen, Lewis, Starkey, LaBarbera, and Feitelson discloses or suggests a user interface for receiving user input

2

that specifies a distribution of processing power. Applicants do not contest that user interfaces are known in the art as interfaces between a user and *user-controlled functions*. However, regardless of whether *user interfaces* are abundantly well-known in the art, **user input specifying distribution of processing** between multiple processors, i.e., that the distribution is under the user's control, is not. *See* RFR, p. 19, ll. 3-11. Accordingly, receiving user input specifying a distribution of processing power, and therefore a user interface for receiving such user input, is not obvious.

The Examiner alleges that Applicants are attacking references individually and are ignoring the combination of references set forth in the FOA. *See* AA, p. 3, ll. 23-27. To the contrary, Applicants have shown that the combination of references set forth in the FOA would fail to yield the claimed invention. *See* RFR, p. 18, l. 19-p. 19, l. 2. Applicants have also shown that a combination of the cited references would not be predictable and would require modification of the references well beyond their "established functions" According to the standard set out in *KSR*. *See* RFR, p. 20, ll. 1-9. For example, Katsuo and Poon show parallel processing according to a predefined algorithm (established function) and Sugiyama shows selection keys for established functions that have nothing to do with distributing processing power. The Examiner admits that the cited references would in fact require modification to yield the claimed invention, (*see* AA, p. 3, l. 30-p. 4, l. 2), thereby supporting Applicants' analysis that the suggested combination is not "predictable."

In the RFR, Applicants showed that the cited references teach away from user determination of processing power distribution. *See* RFR, p. 19, ll. 11-16. The Examiner asserted that Katsuo and Poon do not disparage manual setting of processing distribution because they do not specifically state that it is inadvisable. *See* AA, p. 3, ll. 27-30. However, as the

3

Examiner admits, both Katsuo and Poon *prefer* the use of an *automated* determination of the distribution of processing power. *See* AA, p. 3, l. 30 to p. 4, l. 1. For example, Katsuo says that an *automated* determination of processing allocation beneficially reduces time, difficulty, and cost of program development. *See* Katsuo, col. 13, ll. 35-54. Poon also advocates an *automated* determination of processing parallelization, stressing the importance of a "good optimizing parallel compiler" and describing proper parallelization as "an uphill task for [a] parallel language programmer." *See* Poon, para. spanning p. 638-639. As a result, Applicants submit that Katsuo and Poon do in fact teach away from user determination of processing power distribution.

For at least the above-stated reasons, claim 1 is patentable over Katsuo, Sugiyama, and Poon, alone or in the suggested combinations. Dependent claims 2-6, 20-21, 40, 45, and 55 each incorporate all the limitations of claim 1 and are patentable over the cited references for at least the same reasons, and include additional patentably distinguishable limitations.

Claims 81-84, 98-99, and 118 are pending and stand rejected under U.S.C. 103(a) as allegedly being unpatentable over Katsuo in view of Sugiyama. Independent claim 81 recites a method for printing time-based media and includes limitations similar to those discussed above with respect to claim 1. Therefore claim 81 and its dependent claims 82-84, 98-99, and 118 are patentable over the cited references for at least the same reasons provided above in reference to independent claim 1.

Claims 7-19, 22-39, 42-44, 46-54, 56-80, 85-97 and 100-117 are pending and stand rejected under U.S.C. 103(a) as allegedly being unpatentable over Katsuo and Sugiyama in various combinations with Poon; USPN 6,118,888 to Chino; USPN 5,091,948 to Kametani; USPA Pub. No. 2002/0101513 A1 to Halverson; USPN 6,661,622 B1 to Krum; USPN 6,594,377

B1 to Kim; USPN 5,568,406 to Gerber; USPA Pub. No. 2003/0220988 A1 to Hymel; USPA Pub. No. 2002/0010641 A1 to Stevens; USPN 6,296,693 B1 to McCarthy; USPN 5,115,967 to Wedekind; USPA Pub. No. 2001/0003846 A1 to Rowe; and USPN 6,373,498 B1 to Abgrall. These additional cited references do not disclose or suggest the limitations absent from Katsuo, Sugiyama, and Poon discussed above, nor does the Examiner assert that they do. Therefore, claims 7-19, 22-39, 42-44, 46-54, 56-80, 85-97 and 100-117 also are patentable over all of the references cited above, taken alone or in the suggested combinations.

It is noted that dependent claims 85-118 recite various embodiments of the time-based multimedia function that are applied to the time-based media such as, for example, event detection, sound localization, motion analysis, etc. The references fail to provide any disclosure or suggestion of allocating processing that satisfies a user-specified distribution of processing power to carry out any of these multimedia functions. Thus, these dependent claims include their own patentable features in addition to the patentable features incorporated from their respective base claims.

Therefore, it is requested that the final rejections of claims 1-118 be withdrawn.

Respectfully submitted,
Peter E. Hart et al.

Dated: __October 31, 2008__

By: /Jennifer R. Bush/
Jennifer R. Bush, Reg. No.: 50,784
Fenwick & West LLP
Silicon Valley Center
801 California Street
Mountain View, CA 94041
Tel.: (650) 335-7213
Fax.: (650) 938-5200